APPENDIX A

IN THE CIRCUIT COURT OF
MOBILE COUNTY, ALABAMA

STATE OF ALABAMA,	)	
	)	
Plaintiff,	)	CASE NOS. CC92-3974
	)	CC92-3975
v.	)	CC92-3976
	)	CC92-3977
TONI DARLENE KIMPEL,	)	CC92-3978
	)	CC92-4198
Defendant.	)	

MOTION TO DISMISS INDICTMENTS

Comes now the defendant, TONI DARLENE KIMPEL, by and through her undersigned attorney, and moves this Honorable Court to dismiss the indictments returned against the defendant on the following grounds separately and severally:

I. *Prosecutional Misconduct in Violation of Defendant's Right to Due Process and Equal Protection Under the State and Federal Constitutions.*

A. The said indictments were returned in violation of *Alabama Rule of Criminal Procedure* 12.6 in that persons unauthorized to be present during the grand jury session were present in the grand jury room, to wit: members of the Department of Health and other witnesses, resulting in prejudice to the defendant.

B. The grand jurors were not properly instructed pursuant to Rule 12.8(e) that they were not bound to find an indictment for any misdemeanor unless twelve members of the grand jury "think it is necessary for the public good."

C. The prosecutor failed to present exculpatory information to the jury.

II. *The Court Lacks Subject Matter and Personal Jurisdiction Over the Defendant and Over the Offense.*

A. The statute under which defendant is charged solely regulates the practice of Nurse Midwifery. It is undisputed that defendant is not a registered nurse, therefore her conduct cannot fall under the statute nor the jurisdiction of the court.

B. In addition, the *Alabama Code* specifies that the practice of Nurse Midwifery is limited to deliveries "planned to take place in the hospital," *Alabama Code,* Section 34-19-8, whereas defendant expects the uncontroverted evidence to show that the defendant's practice of Lay Midwifery was, in accordance with the traditional practice of Lay Midwifery in Alabama, limited to planned home births. Finally, defendant did not hold herself out to her clients, or to the community, as a Nurse Midwife. Thus, the defendant's activities do not fall under the statute nor the jurisdiction of the court.

III. *The Indictment in Case No. CC92-4198 Fails to State an Offense Under the Laws of Alabama.*

The offense of criminally negligent homicide requires that the defendant cause the death of a "human being who had been born and alive at the time of the homicidal act," *Alabama Code,* Section 13A-6-1(2) (defining "person when referring to victim of a criminal homicide"). The indictment, however, charges the defendant with causing the death of a "viable fetus." The indictment as written therefore fails to allege an essential element of the offense. In addition, the defendant expects that the uncontroverted evidence will show that the "viable fetus" alleged in the indictment was stillborn and, thus, was not

born or alive at the time of any alleged act as required by the statute.

IV. *The Indictments in CC92-3974 through CC92-3978 Fail to Allege as an Essential Element of the Offense that Defendant is a Nurse.*

V. *Section 34-19-3 of the Code of Alabama Under Which Defendant is Charged is Unconstitutional on its Face and as Applied to This Defendant.*

A. Said indictments are so vague, indefinite and uncertain as to be in violation of the due process and equal protection clauses of the Constitution of the United States of America, Amendment 6, and the Constitution of Alabama of 1901, Article I, Sections 1, 6 and 22.

B. Said indictments and the statute and regulations under which they are drawn are unconstitutional on their face and as applied to this defendant in that said statute and regulations are vague, uncertain, confusing and misleading in that said statute appears to apply to Midwifery as a whole while at the same time exempting the practice of Lay Midwifery from its scope.

C. Said indictment and the statute and regulations under which it is drawn violate defendant's right to privacy, as well as the privacy rights of her clients, on its face and as applied, in that said statute violates a woman's right to choose the manner and circumstances in which her baby is born, including her choice of whomever she wishes to assist her in childbirth as well as the place of childbirth.

D. Said indictments and the statute and regulations under which they are drawn violate defendant's right to privacy, both on its face and as applied, in that said statute requires the woman to give birth in a hospital rather than choosing to give birth at home.

E. Said indictments and the statute and regulations under which they are drawn are unconstitutional on

their face and as applied to this defendant in that said indictments and statute violate the right of the defendant to privacy and the free exercise of religion as well as the right to privacy and free exercise of religion of defendant's alleged clients in violation of the First Amendment to the Constitution of the United States of America and Article I, Section 3 of the Constitution of Alabama.

F. Said indictments and the statute and regulations under which they are drawn are overbroad in violation of the First and Fourteenth Amendments to the Constitution of the United States and Article I, Sections 1 and 6 of the Constitution of Alabama of 1901, in that the statute is not specifically drawn to prevent the punishment of conduct not proscribed by the statute.

G. Said indictments and the statute under which they are drawn violate the equal protection clause of the state and federal constitutions in that said statute impermissibly distinguishes between members of the same class.

VI. *The Defendant is Being Selectively Prosecuted in Violation of the Due Process and Equal Protection Clauses of the Federal and State Constitutions.*

/s/ Douglas H. Scofield

Douglas H. Scofield
Attorney for Defendant,
Toni Darlene Kimpel

APPENDIX B

IN THE CIRCUIT COURT OF MOBILE COUNTY, ALABAMA

STATE OF ALABAMA,	:	
	:	
v.	:	
	:	
TONI DARLENE KIMPEL,	:	
	:	Criminal Action
Defendant.	:	No. *CC-92-3974 through*
	:	*3978*

MOTION TO DISMISS

NOW COMES the defendant and refiles and realleges the motion to dismiss previously filed. The defendant would show unto the court that the indictment should be dismissed because Alabama Code (1975) § 34-19-3(A) prohibits only the practice of *nurse* midwifery without a license. The undisputed facts are that the defendant never held herself out as a nurse midwife and never planned for the delivery of babies to take place in a hospital. To the contrary, the undisputed facts are that the defendant was at all times a lay midwife assisting in traditional home birth of children. It is also undisputed that while the defendant sought to apply for a lay midwife permit, she did not have a lay midwife permit at anytime relevant hereto.

Because the reach of the criminal statute only applies to those practicing nurse midwifery without a license, the practice of lay midwifery without a permit is not a criminal violation. "One who commits an act which does not come within the words of a criminal statute, according to the general and popular understanding of those words,

when they are not used technically, is not to be punished thereunder, merely because the act may contravene the policy of a statute." *Clements v. State,* 370 So. 2nd 723, 725 (Ala. 1979).

/s/ Arthur J. Madden, III

Arthur J. Madden, III
MADDEN & SOTO
Attorney for Defendant
465 Dauphin Street
Mobile, Alabama 36602
(205) 432-0380

CERTIFICATE OF SERVICE

I hereby certify that I have on this 27th day of April, 1994, served a true and correct copy of the foregoing document by hand delivery, properly addressed on:

Jo Beth Murphree, Esq.
Assistant District Attorney
Third Floor
Mobile County Courthouse
Mobile, AL 36602

/s/ Arthur J. Madden, III

Arthur J. Madden, III

APPENDIX C

IN THE CIRCUIT COURT OF
MOBILE COUNTY, ALABAMA

STATE OF ALABAMA, *

VS. * CC92-3974 Through
* 92-3978

TONI DARLENE KIMPEL *

ORDER

Defendant's Motion to Dismiss the indictments dated April 27, 1994 coming on to be heard this 28th day of April 1994, and the Court hearing oral argument from the State of Alabama and the Defendant, the Court finds as follows:

1. The Defendant has been charged in five indictments with violating § 34-19-3 of the Code of Alabama (1975).

2. Section 34-19-3(a) provides:

> It shall be unlawful for any person other than a licensed professional nurse who has received a license from the state board of nursing and the board of medical examiners to practice midwifery in this state. Any person violating this subsection shall be guilty of a misdemeanor.

3. Section 34-19-3(b) provides:

> Nothing in subsection (1) of this section shall be construed as to prevent lay midwives holding valid health department permits from engaging in the practice of lay midwifery as heretofore provided until such time as said permit may be revoked by the county board of health.

4. The question arises whether the statute maintains the practice of lay midwifery as a practice separate and distinct from nurse midwifery and whether the practice of lay midwifery without a valid permit constitutes a misdemeanor. Or, does the statute establish nurse midwifery as the only legal midwifery in Alabama?

5. The State argues that the statute abolishes the practice of lay midwifery and establishes nurse midwifery as the only legal midwifery practice allowable in the State of Alabama. With regard to subsection (b), the State contends that it merely provides that those lay midwives legally practicing at the time of the passage of the Act would be allowed to continue their lay midwifery practice until their health department permits were revoked. Had the State legislature intended that lay midwifery remain a legal practice of midwifery it would have specifically provided for its retention in the statute. By repealing the prior lay midwifery statute, and providing only for the licensed practice of nurse midwifery, the inference to be drawn is that the legislature intended that the practice of lay midwifery be prohibited, since the statute specifically provides for the practice of nurse midwifery only, and provides a criminal penalty for failure to comply with the Act.

6. The defendant argues that subsection (b) of the statute recognizes a category of midwifery known as lay midwifery which is separate and distinct from nurse midwifery, and that, furthermore, it remains unregulated by the statute since subsection (b) contains no sanctions for the practice of lay midwifery without a permit. The only criminal sanctions imposed are in subsection (a) which applies to nurse midwifery as opposed to lay midwifery. If the legislature had intended that practicing lay midwifery without a permit constitutes a misdemeanor, it could have so provided. It did not. Accordingly, the court finds

that the statute could be interpreted either way and is vague and ambiguous.

WHEREFORE, it is ordered that the Defendant's Motion to Dismiss is granted.

DONE and ORDERED this the 4th day of May, 1994.

/s/ ROBERT E. L. KEY

ROBERT E. L. KEY
Circuit Judge

APPENDIX D

Released March 3, 1995

NOTICE: This opinion is subject to formal revision before publication in the advance sheets of *Southern Reporter*. Readers are requested to notify the Reporter of Decisions, Alabama Appellate Courts, 300 Dexter Avenue, Montgomery, Alabama 36130-1555 ((334) 242-4621), of any typographical or other errors, in order that corrections may be made before the opinion is printed in *Southern Reporter*.

ALABAMA COURT OF CRIMINAL APPEALS
OCTOBER TERM, 1994-95

CR-93-1361

State

v.

Toni Darlene Kimpel

Appeal from Mobile County

(CC-92-3974 through -3978)

PATTERSON, JUDGE

Toni Darlene Kimpel was charged, in five separate indictments, with practicing nurse midwifery without a license. This offense is a misdemeanor under § 34-19-3, Code of Alabama 1975. The trial court, holding that § 34-19-3 is "vague and ambiguous,"[1] dismissed the indict-

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[1]Vague or ambiguous criminal statutes are unconstitutional. United States v. Harriss, 347 U.S. 612, 74 S.Ct. 808, 98 L.Ed. 989 (1954), Senf v. State, 622 So.2d 435 (Ala.Cr.App. 1993).

ments in a pretrial order. The state appeals the trial court's ruling.

Kimpel argues that this court is without jurisdiction to hear this appeal. She relies on Rule 15.7(a), Ala.R. Crim.p.:

> "[a]n appeal may be taken by the state in a *felony* case to the Court of Criminal Appeals from a pre-trial order of the circuit court (1) suppressing a confession or admission or other evidence, (2) dismissing an indictment, information, or complaint (or any part of an indictment, information, or complaint), (3) quashing an arrest or search warrant. Such an appeal may be taken only if the district attorney certifies to the Court of Criminal Appeals that the appeal is not brought for the purpose of delay and that the order, if not reversed on appeal, will be fatal to the prosecution of the charge."

(Emphasis added.) Kimpel notes that this court has interpreted Rule 15.7 to be the exclusive avenue for a pretrial appeal by the state in a criminal case and to be inapplicable to misdemeanors. In *City of Attalla v. Smith*, 596 So.2d 651, 651 (Ala.Cr.App. 1992), this court held, "[r]ule 15.7 allows pretrial appeals by the State only in felony cases. There is no provision for a pretrial appeal by the state in a misdemeanor case." We find, however, that the rationale of *City of Attalla v. Smith* is incorrect, because it flies in the face of the state's statutory right to appeal judgments holding statutes unconstitutional.

Section 12-22-91, provides another means by which the state may appeal a trial court's judgment:

> "*In all criminal cases* when the act of the legislature under which the indictment or information is preferred is held to be unconstitutional, the district attorney may take an appeal in be-

> half of the state to the supreme court, which appeal shall be certified as other appeals in criminal cases, and the clerk must transmit, without delay, the record on appeal and the notice of appeal to the supreme court."

(Emphasis added.) This provision originally appeared as § 4515, Code of Alabama of 1886. At that time, the Supreme Court was the only appellate court in Alabama. Therefore, the term "supreme court" was not intended to deny jurisdiction to the Court of Criminal Appeals, which was established in 1969, or to our predecessor, the Court of Appeals, which was established in 1911. See, e.g., *State v. Street,* 117 Ala. 203, 23 So. 807 (1898) (deciding direct appeal under the predecessor to § 12-22-91, in the absence of any other existing state appellate court).

The judicial history of this statute demonstrates that the Alabama Supreme Court and the Court of Criminal Appeals agree that appeals under § 12-22-91 may properly be brought initially to this court. *State v. Gooden,* 570 So.2d 865 (Ala.Cr.App. 1990) (affirming trial court, pursuant to § 12-22-91), *State v. Franklin,* 541 So.2d 593 (Ala.Cr.App. 1989) (reversing trial court, on transfer from the Supreme Court and pursuant to § 12-22-91), *State v. Clayton,* 492 So.2d 665 (Ala.Cr.App. 1986) (reversing trial court, pursuant to § 12-22-91), *State v. Woodruff,* 460 So.2d 325 (Ala.Cr.App. 1984) (reversing trial court, pursuant to § 12-22-91), *State v. Spurlock,* 393 So.2d 1052 (Ala.Cr.App. 1981) (reversing trial court, pursuant to § 12-22-91), *State v. Wilkerson,* 54 Ala.App. 104, 305 So.2d 378 (reversing trial court, pursuant to the predecessor to § 12-22-91), cert. denied, 293 Ala. 774, 305 So.2d 382 (1974). Although there are several cases in which the Supreme Court has decided a § 12-22-91 issue on direct appeal, *State v. Rogers,* 281 Ala. 27, 198 So.2d 610 (1967), *State v. Mills,* 278 Ala. 188, 176 So.2d 884 (1965), rev'd on

other grounds, 384 U.S. 214, 86 S.Ct. 1434, 16 L.Ed.2d 484 (1966), *State v. Cecil,* 216 Ala. 391, 113 So. 254 (1927) (deciding, pursuant to the predecessor to § 12-22-91, an appeal certified and transferred to Supreme Court from Court of Appeals), those cases were decided under § 7310, Code of Alabama of 1923, and its progeny. Section 7310 required that all appeals challenging the constitutionality of a statute must be heard by the Supreme Court, as opposed to the Court of Appeals. This statute was repealed by the adoption of the Code of Alabama 1975. The codifiers considered and rejected the idea of limiting our intermediate appellate courts' jurisdiction over constitutional issues.

Under § 12-22-91, the state may appeal the trial court's judgment in any case where the trial court holds the statute creating an offense unconstitutional. *State v. Gautney,* 344 So.2d 232 (Ala.Cr.App. 1977), and *State v. Powe,* 28 Ala.App. 402, 185 So. 781 (1939). When a statute is held unconstitutional by a pretrial order, that order is a final judgment and the state may appeal under § 12-22-91. See § 12-22-2 (stating that an appeal must be from a final judgment). See also *Sparks v. State,* 40 Ala.App. 551, 554, 119 So.2d 596, 599 (1959) ("A final judgment, decision or order which will support an appeal, is one which puts an end to the proceedings between the parties to a cause in the court, and leaves nothing further to be done."), cert. denied, *Sparks v. State,* 270 Ala. 488, 119 So.2d 600 (1960). Furthermore, § 12-22-91 applies to both misdemeanor and felony cases. See *State v. Hewlett,* 124, Ala. 471, 27 So. 18 (1899) (applying § 12-22-91 to a misdemeanor), and *City of Mobile v. Welch,* 572 So.2d 1322, 1323 (Ala.Cr.App. 1990) (same), quoted in *Ex parte Adams,* 592 So.2d 641 (Ala. 1991).

Therefore, although Rule 15.7 does not give this court jurisdiction over this appeal, the state's appeal is properly

before this court by virtue of § 12-22-91.[2] That portion of *Attalla v. Smith* that conflicts with this opinion is expressly overruled.

II.

The state contends that the trial court erred in concluding that § 34-19-3 was unconstitutionally vague. Section 34-19-3 states:

> "(a) It shall be unlawful for any person other than a licensed professional nurse who has received a license from the state board of nursing and the board of medical examiners to practice nurse midwifery in this state. Any person violating this subsection shall be guilty of a misdemeanor.
>
> "(b) Nothing in subsection (a) of this section shall be construed as to prevent lay midwives holding valid health department permits from engaging in the practice of lay midwifery as heretofore provided until such time as said permit may be revoked by the county board of health."

When construing the language of a statute, "it is a court's duty to give effect to the intent of the legislature as expressed in the words contained in the statute." *Ex parte Rodgers*, 554 So.2d 1120 (Ala. 1989).

In this case, both the words and the meaning of Alabama's midwifery statute are clear on the face of the statute. Section 34-19-3(a) prohibits one specific category of conduct, "the practice of nurse midwifery," defined as,

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[2]Rule 15.7 and § 12-22-91 serve different functions. Rule 15.7 allows the state to preserve the prosecution of an individual if the trial court errs in a way that will be fatal to the state's advancement of that particular case. Section 12-22-91 allows the state to preserve a prosecution if the trial court errs in a way that will be fatal to future prosecutions under that statute.

"[c]are for the mother during pregnancy and labor providing continuous physical and emotional support and evaluation of progress throughout labor and delivery." § 34-19-2(2), Code of Alabama 1975. These sections provide adequate notice of what conduct is prohibited.

Each of the indictments issued by a Mobile County grand jury reads in pertinent part:

> "Toni Darlene Kimpel . . . did, by agreement or contract for payment or other payment or consideration, provide care, management, evaluation, examinations, prenatal care, advice and assistance as a nurse midwife during the pregnancy and delivery of a child . . ."

Kimpel's vagueness challenge is predicated on her assertion that she practiced lay midwifery, rather than nurse midwifery. Because nurse midwifery is defined by statute, and because the term "lay midwives" appears in the statute without definition, Kimpel argues that the statute does not prohibit her midwifery practice. This argument is without merit.

"[T]he essential purpose of the 'void for vagueness' doctrine is to warn individuals of the criminal consequences of their conduct." *Jordan v. De George,* 341 U.S. 223, 230, 71 S.Ct. 703, 707, 95 L.Ed. 886 (1951). First, these indictments allege conduct that, if proven, would clearly be prohibited by § 34-19-3. Second, the term "lay midwives" appears in § 34-19-3(b), which allows "lay midwives holding valid health department permits," to continue the practice of lay midwifery. Kimpel has never possessed such a permit.[3] This statute clearly prohibits a nar-

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[3]In fact, no one possesses a valid health department permit for the practice of lay midwifery. This provision was grandfathered in the 1975 Code. All those who previously held these permits have terminated their practice, and the health department no longer issues such permits.

rowly defined class of conduct. We therefore find that this statute is neither vague nor ambiguous.

III.

Kimpel argues that Alabama's midwifery statute is unconstitutional because, she contends, it constitutes an invasion of privacy and violates her right to Equal Protection under the law. These contentions are without merit.

A.

In *Roe v. Wade,* 410 U.S. 113, 93 S.Ct. 705, 35 L.Ed.2d 147 (1973), the Supreme Court recognized that the state has a legitimate interest in providing for the safety of a viable fetus. When the fetus is viable (the court determined that viability begins at the end of the first trimester), the mother's privacy rights are subjugated to the governmental interest in protecting both hers and the child's safety. See also *People v. Rosburg,* 805 P.2d 432 (Colo. 1991) (holding that under *Roe,* the right to privacy does not extend to choosing the manner of childbirth, specifically, midwifery), accord *Bowland v. Municipal Court for Santa Cruz County,* 18 Cal.3d 479, 556 P.2d 1081, 134 Cal.Rptr. 630 (1976). Therefore, the constitutionally protected right to privacy is not violated by a statute regulating the practice of midwifery.

B.

In an equal protection analysis of a law that does not involve a suspect class, the proper standard of review is whether that statute is rationally related to a legitimate government objective. *Village of Belle Terre v. Boraas,* 416 U.S. 1, 94 S.Ct. 1536, 39 L.Ed.2d 797 (1974).

The Alabama statute regulating the practice of midwifery does not involve a suspect class. Furthermore, as

illustrated above, in discussing *Roe,* protection of the safety of a mother and child during labor and delivery is a legitimate government objective. Therefore, this statute does not violate the equal protection guarantees of either the federal or our state constitution.

The trial court is instructed to set aside its order dismissing the indictments and to restore them to the trial docket for appropriate disposition.

REVERSED AND REMANDED.

TAYLOR, P.J., McMILLAN, COBB, JJ., CONCUR; LONG, J., RECUSES HIMSELF.

APPENDIX E

IN THE SUPREME COURT OF ALABAMA
June 30, 1995

1941044

Ex parte Toni Darlene Kimpel. PETITION FOR WRIT OF CERTIORARI TO THE COURT OF CRIMINAL APPEALS (In re: State v. Toni Darlene Kimpel) (93-1361) (Mobile: CC-93-3974)

CERTIFICATE OF JUDGMENT

Writ Denied

The above cause having been duly submitted, IT IS CONSIDERED AND ORDERED that the petition for writ of certiorari is denied.

COSTS TAXED TO PETITIONER.

SHORES, J. - Hornsby, CJ., Maddox, Kennedy and Cook, JJ., concur.

I, Robert G. Esdale, as Clerk of the Supreme Court of Alabama, do hereby certify that the foregoing is a full, true and correct copy of the instrument(s) herewith set out as same appear(s) of record in said Court.

Witness may hand this 30 day of June, 1995.

/s/ ROBERT G. ESDALE

ROBERT G. ESDLAE
Clerk, Supreme Court of Alabama

APPENDIX F

CHAPTER 19.
MIDWIVES.

Sec.

34-19-1. Repealed.
34-19-2. Definitions.
34-19-3. License for practice of nurse midwifery required; continuation of practice of lay midwifery.
34-19-4. Application for license.
34-19-5. Issuance, renewal, suspension and revocation of licenses; fee.
34-19-6. Practices which may be performed by licensees — Generally.
34-19-7. Same — Restrictions generally.
34-19-8. Same — Attendance, etc., in cases of abnormal childbirth; location of deliveries.
34-19-9. Designation of midwife certification on professional nursing license.
34-19-10. Promulgation of rules and regulations, procedures, standards, etc., for nurse midwives.

§ 34-19-1. Repealed by Acts 1976, No. 499, p. 624, § 10, effective August 23, 1976

§ 34-19-2. Definitions.

When used in this chapter, the following words and phrases shall have the following meanings, respectively, unless the context clearly indicates otherwise:

(1) NURSE MIDWIFE. A registered nurse who by virtue of added knowledge and skill gained through an organized program of study and clinical experience recognized by the American College of Nurse-Midwives has extended the limits of her practice into the area of

management of care of mothers and babies throughout the maternity cycle so long as progress meets criteria accepted as normal.

(2) PRACTICE OF NURSE MIDWIFERY. Care for the mother during pregnancy and labor providing continuous physical and emotional support and continuous evaluation of progress throughout labor and delivery.

(3) NORMAL CHILDBIRTH. Delivery, at or close to term, of a pregnant woman whose physical examination by a physician reveals no abnormalities. (Acts 1976, No. 499, p. 624, § 1.)

§ 34-19-3. License for practice of nurse midwifery required; continuation of practice of lay midwifery.

(a) It shall be unlawful for any person other than a licensed professional nurse who has received a license from the state board of nursing and the board of medical examiners to practice nurse midwifery in this state. Any person violating this subsection shall be guilty of a misdemeanor.

(b) Nothing in subsection (a) of this section shall be construed as to prevent lay midwives holding valid health department permits from engaging in the practice of lay midwifery as heretofore provided until such time as said permit may be revoked by the county board of health. (Acts 1976, No. 499, p. 624, § 1.)

Cross references. — As to board of nursing and nurses generally, see § 34-21-1 et seq. As to board of medical examiners generally, see §§ 34-24-53 and 34-24-54.

Collateral references. — 70 C.J.S., Physicians & Surgeons, §§ 1, 10.

61 Am. Jur. 2d, Physicians, Surgeons, etc., § 29.

Midwifery: state regulation. 59 ALR4th 929.

§ 34-19-4. Application for license.

A person desiring to obtain a license to enter into the practice of nurse midwifery shall make written application to the board of nursing and the board of medical examiners. Every applicant for a license to practice midwifery must be a licensed registered nurse and possess a certificate from a school for nurse midwives recognized by the American College of Nurse-Midwives. (Acts 1976, No. 499, p. 624, § 2).

§ 34-19-5. Issuance, renewal, suspension and revocation of licenses; fee.

(a) The state board of nursing and the board of medical examiners may issue or refuse to issue or, having issued, may suspend or revoke licenses to practice nurse midwifery under the provisions of this chapter in accordance with such rules and regulations promulgated under the provisions of this chapter.

(b) Licenses issued under this chapter shall be renewable biennially at such time and in such a manner as prescribed by the state board of nursing and the board of medical examiners.

(c) Suspension and revocation of licenses shall be by the state board of nursing and the board of medical examiners for due cause after investigation.

(d) The state board of nursing and the board of medical examiners are hereby authorized to levy and collect a fee for the issuance and renewal of licenses to practice nurse midwifery pursuant to this chapter. (Acts 1976, No. 499, p. 624, § 3; Acts 1989, No. 89-243, p. 349, § 3.)

§ 34-19-6. Practices which may be performed by licenses — Generally.

A person holding a license to practice midwifery issued by the state board of nursing and the board of medical

examiners may provide maternity care to patients, including prenatal care, deliver normal pregnancies and administer postnatal care. The above care will be done under appropriate physician supervision. (Acts 1976, No. 499, p. 624, § 6.)

Collateral references. — Midwifery: state regulation. 59 ALR4th 929.

§ 34-19-7. Same — Restrictions generally.

The licenses issued under this chapter shall not confer upon any person the right to practice medicine, to undertake the charge of abnormal cases of confinement or any disease in connection with confinement or to assume any name, title, or designation implying that such person is authorized by law to undertake the charge of any such cases or to practice medicine. (Acts 1976, No. 499, p. 624, § 5.)

§ 34-19-8. Same — Attendance, etc., in cases of abnormal childbirth; location of deliveries.

It shall be unlawful for any person holding a license as a nurse midwife to attend any cases except cases of normal childbirth, as defined in section 34-19-2, or to perform manipulations of any kind. In all cases in which the child is not delivered spontaneously within a reasonable time, the nurse midwife shall notify a qualified physician immediately and make no effort to deliver the child except under the authorization and supervision of such physician.

All deliveries must be planned to take place in the hospital. (Acts 1976, No. 499, p. 624, § 7.)

§ 34-19-9. Designation of midwife certification on professional nursing license.

Individuals meeting the requirements set forth shall have their professional nursing license also designated certified nurse midwife (C.N.M.) upon the payment of required fees. (Acts 1976, No. 499, p. 624, §8; Acts 1989, No. 89-243, p. 349, § 3.)

Collateral references. — Midwifery: state regulation. 59 ALR4th 929.

§ 34-19-10. Promulgation of rules and regulations, procedures, standards, etc., for nurse midwives.

The state board of nursing and the board of medical examiners shall have the authority and power to make and promulgate such rules and regulations as may appear necessary and proper to carry out the purposes of this chapter, including, but not limited to, minimum educational and physical requirements for nurse midwives, the procedures and techniques to be employed in the practice of nurse midwifery and the ethical standards to be observed by nurse midwives. (Acts 1976, No. 499, P. 624, § 4.)

Collateral references. — Midwifery: state regulation. 59 ALR4th 929.

APPENDIX G

CHAPTER 9.
MIDWIVES.

Sec.
168. Practice of midwifery regulated.

§ 168. (1064) (711) Practice of midwifery regulated.—It shall be unlawful, for any person, other than a regularly licensed physician, to practice as a midwife without first making written application for and receiving a permit to practice midwifery from the county board of health. The term "midwife" shall be construed to include any person, other than a regularly licensed physician, who shall attend, or who shall bargain, contract, or agree to attend, any woman at or during childbirth. Any person violating this section shall be guilty of a misdemeanor, and upon conviction, upon the first offense, shall be fined not less than ten dollars or imprisonment for not less than one month, and for subsequent offenses shall be fined not less than fifty dollars, nor more than five hundred dollars, or imprisoned for not less than three months nor more than six months, or both. County boards of health shall from time to time, upon written application made in such form and in such manner as may be prescribed by the state board of health, either by a schedule of questions to be answered and subscribed, or orally, examine any person of a good moral character and temperate habits who desires to engage in the practice of midwifery, as to his or her qualifications and knowledge of the art; and if a majority of the county board of health shall be satisfied that such person is competent to engage in the practice of midwifery, said board shall enter the name of such person as a registered midwife in a book provided for that purpose, and may at its discretion issue to such person a permit to practice mid-

wifery to be signed by the chairman of said board, and countersigned by the health officer. No permit to practice midwifery shall be issued by a county board of health to any person, unless such person shall present to said county board of health satisfactory evidence of having or possessing sufficient knowledge and skill in the art of midwifery, and that such person is free from a communicable disease, and of good moral character. The said permit may be revoked by the county board of health at any time, after proper investigation because of failure to comply with the provisions of this chapter, or the rules and regulations of the state board of health applying to midwifery. (1919, p. 909; 1935, p. 929).